

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 10, 2009

ANTIONE HARBISON v. ROLAND COLSON, WARDEN

Direct Appeal from the Criminal Court for Davidson County
No. 98-B-1283 J. Randall Wyatt, Jr., Judge

No. M2009-00030-CCA-R3-HC - Filed February 19, 2010

The petitioner, Antione Harbison, appeals from the Davidson County Criminal Court's dismissal of his petition for a writ of habeas corpus, in which he sought relief from his convictions for aggravated rape and attempted first degree murder. On appeal, the petitioner argues that his trial counsel were ineffective and that his pleas were not knowingly and voluntarily entered. Upon review, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and J.C. MCLIN, JJ., joined.

Antione C. Harbison, Only, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record before us reveals that on June 5, 1998, the petitioner was indicted on three counts of aggravated rape, one count of especially aggravated kidnapping, one count of especially aggravated burglary, and one count of attempted first degree murder. On August 13, 1999, the petitioner pled guilty to aggravated rape and attempted first degree murder in exchange for the dismissal of the remaining charges. See Antione Harbison v. State, No. M2001-00887-CCA-R3-CD, 2002 WL 533950, at *1 (Tenn. Crim. App. at Nashville, Apr. 10, 2002). Pursuant to the plea agreement, the petitioner agreed to be sentenced outside the

sentence range on the aggravated rape charge, and the court sentenced him as a violent offender to thirty years with one hundred percent of the sentence to be served in confinement. Id. The petitioner was sentenced as a standard Range I offender to fifteen years for the attempted first degree murder conviction, which sentence was to be served concurrently with the thirty-year sentence. Id.

Subsequently, the petitioner filed a petition for post-conviction relief, alleging he was not competent to stand trial and that his trial counsel were ineffective in failing to investigate his mental health issues and ensuring his competency to plead guilty. Id. Additionally, the petitioner alleged that his guilty pleas were not knowingly and voluntarily entered. Id. At the post-conviction hearing, trial counsel testified that although the petitioner was “slow,” he nevertheless understood the plea proceedings, the charges he was facing, and the potential sentences. Id. at **1-4. Additionally, one of the petitioner’s trial counsel recalled a report on a mental evaluation of the petitioner. Id. at *3. The report, which concerned evaluations occurring in November and December 1997, reflected that the petitioner possibly had mental and learning disabilities, but he also malingered on several of the tests in an attempt to distort the test results. Id. at *4. The post-conviction court found that trial counsel’s testimony reflected that the petitioner’s mental health issues were explored and that the petitioner was competent to enter guilty pleas. Id. at **5-6. The petitioner appealed the post-conviction court’s ruling, and, on April 10, 2002, this court affirmed the judgment. Thereafter, on October 14, 2002, our supreme court denied the petitioner permission to appeal this court’s ruling.

On August 11, 2008, the petitioner filed a petition for a writ of habeas corpus, contending in pertinent part that his convictions and sentences were illegal because his trial counsel were ineffective and that his guilty pleas were not knowingly and voluntarily entered.¹ The habeas corpus court dismissed the petition, finding that the petitioner’s convictions and sentences were facially valid and the petitioner was not entitled to habeas corpus relief. On appeal, the petitioner argues that the habeas corpus court “erred in determining that [he] was not entitled to relief from ineffective assistance of trial counsel and from an uninformed and unreasoned plea agreement.”

II. Analysis

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). Accordingly, we will review the trial court’s findings de novo without a presumption of correctness. Id.

¹ The petitioner raised additional issues in his habeas corpus petition; however, on appeal he pursues only the ineffectiveness of counsel and the voluntariness of his plea.

Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, "[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

In his brief, the petitioner asserts that "the trial court improperly ruled that he was competent to stand trial or alternatively to plead guilty." He acknowledges that this issue was previously decided at his post-conviction hearing and on appeal from the post-conviction court's ruling. However, he contends that "the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand."

As the petitioner acknowledges, the issues regarding the ineffectiveness of counsel and the knowing and voluntary nature of his guilty pleas, were fully litigated in the post-conviction proceeding. The issues were addressed by this court and our supreme court denied permission to appeal. Generally,

"issues previously litigated and decided by a court of competent jurisdiction . . . need not be revisited. This rule promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts."

State v. Jefferson, 31 S.W.3d 558, 561 (Tenn. 2000) (quoting Memphis Publ'g Co. v. Tennessee Petroleum Underground Storage Tank Bd., 975 S.W.2d 303, 306 (Tenn. 1998)). In a habeas proceeding, "[w]e will not revisit issues . . . that have been previously decided and disposed of on direct appeal or on appeal from the denial of post-conviction relief." Allen Jean Stephens v. State, No. W2008-02583-CCA-R3-HC, 2009 WL 3246958, at *3

(Tenn. Crim. App. at Jackson, Oct. 9, 2009); see also Long v. State, 510 S.W.2d 83, 87 (Tenn. Crim. App. 1974).

Furthermore, we note that the petitioner's claims regarding the ineffectiveness of counsel and the knowing and voluntary nature of his pleas would, at best, render his judgments voidable, not void; therefore, such allegations are not cognizable claims for habeas corpus relief. See Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994); Walter D. Starnes v. Tony Parker, Warden, No. W2006-01634-CCA-R3-HC, 2006 WL 3613603, at *2 (Tenn. Crim. App. at Jackson, Dec. 8, 2006). Accordingly, the petitioner is not entitled to habeas corpus relief.

III. Conclusion

Finding no error, we affirm the judgment of the habeas corpus court.

NORMA McGEE OGLE, JUDGE